IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.496 OF 2006

Dnyandeo N. Desai and another Petitioners

versus

B.G.Desai V.K.S. Society
and others Respondents

S.s.Patwardhan for petitioners.

P.D.Dalvi for respondents 1 to 3.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 10th February 2006

PC :

1. Heard Shri Patwardhan for the petitioner. Perused the order passed by the Trial Court as well as Lower Appellate Court.

2. In my view, this is not a fit case for interference, under Article 227 of the Constitution of India, with the concurrent prima facie conclusions recorded by the Courts below. Upon perusal of the materials produced as also hearing parties, the Courts below have recorded that the petitioners-original disputants have

failed to make out a prima facie case of their co-option in place of certain persons as Managing Committee members. In the order of the Trial Court all materials have been referred to and after referring to the same, ultimately the Trial Court has in paras 12 and 13 arrived at a prima facie conclusion that the petitioners- original disputants are trying to justify the alleged co-option by showing that some persons on the Managing Committee have been expelled.

3. After observing that the Managing Committee had no vacancy and therefore the question of petitioners being co-opted, does not arise, that the Court below have made certain observations in para no.4 of the order of the Trial Court and in para no.4 of the order of the Lower Appellate Court.

4. These observations are obviously tentative and it will be open for the petitioners to point out that under the bye-laws as well as under the Maharashtra Co-op. Societies Act it is permissible for the General Body to expel the Managing Committee members. It is not necessary to entertain this petition merely because in the submission of Shri Patwarhan these observations

over look the bye-laws and the provisions of Maharashtra Co-op. Societies Act.

5. After clarifying that all observations of the Courts below are prima facie and shall not bind the Trial Court while deciding the dispute, it is not necessary to entertain this petition. Petition dismissed.

(S.C.DHARMADHIKARI, J.)